

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants:	Stephen GOLD et al.	§	Confirmation No.:	3200
		§		
Serial No.:	10/684,001	§	Group Art Unit:	2185
		§		
Filed:	October 10, 2003	§	Examiner:	Y. Campos
		§		
For:	Methods and Systems	§	Docket No.:	200309328-1
	For Calculating Required	§		
	Scratch Media	§		

REPLY BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Date: May 26, 2009

Sir:

In response to the Examiner's Answer dated April 23, 2009, Appellants submit this Reply Brief.

I. RESPONSE TO ARGUMENTS OF THE EXAMINER'S ANSWER

In the Response to Argument section of the Answer, the following statement is made:

First, the Examiner would like to point out that the pending claims do not include any limitations dictating what the "calculated projected number" may be or discriminating said "projected number" from being any number of devices. Therefore, the "projected number of devices" as claimed, may be any number of devices, including zero, one or all the devices in a storage system.¹

The Answer does not appear to be formulating the rejections against the claims as currently written. Each independent claim discusses, in some form, calculating a projected number of scratch media. For example, claim 1 recites, "calculating a projected number of media." Claim 17 recites, "a computer system configured to calculate a number of media." Likewise, claim 23 recites instructions to "calculate a proposed number of media." Moreover, the claiming of backup media in this

¹ Examiner's Answer Page 17, fourth full paragraph.

fashion is fully consistent with the disclosure of Appellants specification. Contrary to the assertion of the Answer, the claims are not directed to calculating a number of generic "devices," and it is improper and unreasonable in view of the Appellants' specification to expand "media" to be any "device" as the Answer attempts.

With respect to claims 15 and 21, the Answer attempts to rely on Bolin Col. 13, line 65 through Col. 14, line 1 regarding "receiving from the user a list of one or more media to be used." The section cited by the Answer is directed to the use of categories to organize the Bolin tape library. For example, based on the category a librarian can more quickly identify a "pick list" of tapes to be pulled from the system.² It does not appear from the cited locations that the categories or "pick list" are used to identify to the Bolin system which tapes to use in the backups. In fact, the paragraphs at Bolin Col. 13, line 59 through Col. 14, line 24 are the only locations in Bolin where the term "pick list" appears. Thus, alone or considered with Kanai, Bolin fails to teach "receiving from the user a list of one or more media to be used" in relation to the claimed one or more backup jobs.

II. CONCLUSION

It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,

/mes/

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
Legal Dept., M/S 35
P.O. Box 272400
Fort Collins, CO 80527-2400

Mark E. Scott, PTO Reg. No. 43,100
CONLEY ROSE, P.C.
(512) 610-3410 (Phone)
(512) 610-3456 (Fax)
ATTORNEY FOR APPELLANTS

² Bolin Col. 14, lines 3-24.